

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MDL NO. 1358 (SAS)
Master File C.A. No. 1:00-1898

In re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

**DECLARATION OF SCOTT
HARTWELL**

This Document Relates To
*Orange County Water District v. Unocal
Corp., et al.*

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1. My name is Scott Hartwell. I am over eighteen years of age, and I am competent to submit this declaration. If called to testify, I could competently testify to the following facts.

2. I have been employed by Atlantic Richfield Company and/or its successor BP West Coast Products LLC (collectively "BP") since 1991, and am currently a Franchise Business Consultant for ARCO-branded gasoline service stations in the Pacific Northwest. Between 1991 and 2001, I was involved with the operations of various ARCO-branded retail service stations outlets in Southern California, including Orange County, that were either company-operated or that were operated by independent contract lessee dealers and/or franchisees ("Dealers"). Based on my experience, I am familiar with the responsibilities of Dealers who operated ARCO-branded gasoline service stations in Orange County, specifically with regards to the monitoring of underground storage tank systems ("USTs"), daily station operations, and spill response and reporting procedures.

OPERATING STATUS OF ARCO #1887 AND #1905 BETWEEN LATE SUMMER/EARLY FALL OF 1989 THROUGH JANUARY 2003

3. Based on records provided to me for review, I have confirmed that BP owned the USTs at ARCO #1887 located at 16742 Beach Boulevard in Huntington Beach, California, between the late summer/early fall of 1989 until the station closed on June 30, 2001. However, during this entire timeframe, ARCO #1887 was operated by Dealers who were responsible for the daily operations at the stations as described more fully below. Those Dealers were as follows: Peter Brito (April 1989 - December 1990) and Phi D. Phan (December 1990 - site closure on December 31, 2000).

4. Similarly, based on records provided to me, I have confirmed that BP owned the USTs at ARCO #1905 located at 18025 Magnolia Street in Fountain Valley, California, between the late summer/early fall of 1989 until at least January 2003. However, during this entire timeframe (except between August 1995-May 1998), ARCO #1905 was operated by Dealers who were responsible for the daily operations at the stations. Those Dealers were as follows: Amer I. Masri (April 1986 - September 1990); Imad Halawani (September 1990 - August 1995); Phams Service Station, Inc. (May 1998 - present). Between August 1995 and May 1998, ARCO #1905 was operated by Prestige Stations Inc., a wholly-owned subsidiary of BP that operated ARCO-branded, company-operated retail facilities.

5. Dealers, such as those operating ARCO #1887 and #1905, are not BP employees, but rather independent contractors who undertake the exclusive control of the site premises and all activities conducted there. Further, persons working at a site operated by a Dealer are not BP employees, but rather are employed by the Dealer themselves. No BP employees would have worked on a daily basis at ARCO #1887 and #1905 while they were Dealer-operated.

***DAILY RESPONSIBILITIES OF INDEPENDENT DEALERS OPERATING
BRANDED ARCO/BP SITES***

6. Dealers, such as those who operated both ARCO #1887 and #1905, undertake the responsibilities of a tank operator as set forth in the UST permit. Those responsibilities include, but are not limited to:

- a. Monitoring the site's USTs as required by law
- b. Compliance with reporting and operating procedures; and
- c. Reporting procedures immediately notifying BP of all suspected or confirmed releases from the USTs, unusual operating conditions, triggered alarms monitoring the UST system, and any spills and overfills that cannot be contained or cleaned-up.

7. With respect to daily duties pertaining to UST system monitoring, Dealers, such as those who operated ARCO #1887 and #1905, carry out the following activities:

- a. Gauge product storage tanks for inventory loss and water;
- b. Verify inventory daily using stick readings and report any discrepancies outside of state regulations and company policy;
- c. Record all product deliveries by grade and quantity;
- d. Inspect UST control panels for visual and audible alarm signals;
- e. Inspect and clean spill buckets as necessary; and
- f. Inspect island and tank fill areas for signs of product spillage or sheen.

BP is not, nor ever was, responsible for these tasks since no BP employee works on-site on a daily basis at Dealer-operated stations, including ARCO #1887 and ARCO #1905 (except between August 1995-May 1998) during the relevant time period.


8. Likewise, with respect to daily duties relating to spill and/or release response procedures, Dealers, such as those who operated ARCO #1887 and #1905, are required to do the following:

- a. Immediately notify BP whenever an alarm on the UST system activated, and record the alarm in applicable paperwork;
- b. Immediately contain the spill or release and place proper absorbent on the spill, or call 911, if necessary. In addition, immediately notify BP of any spill or release, and report details of type of release, volume, etc. to ensure accurate completion of unauthorized release report (prepared by BP) to local oversight agency.

BP is not, nor ever was, responsible for these tasks since no BP employee works on-site on a daily basis at Dealer-operated stations, including ARCO #1887 and ARCO #1905 (except between August 1995-May 1998) during the relevant time period.

9. I declare under penalty of perjury that the foregoing is correct and true.

Dated: March 8, 2011



Scott Hartwell